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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/750,475      | 12/28/2000  | Lynh Nguyen          | ST9-99-134US3       | 7832             |

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WASHINGTON, DC 20037

EXAMINER

JAROENCHONWANIT, BUNJOB

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2143

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/750,475

Applicant(s)

NGUYEN, LYNH

Examiner

Bunjob Jaroenchonwanit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/17/05</u> . | 6) <input type="checkbox"/> Other: _____  |

*R*

## **Detailed Action**

### ***Priority***

1. Priority, applicant claimed DIV, is acknowledge, however, the voluntarily filed DIV would not preclude the parent application from applying against the instant claims, if they are applicable (See MPEP 804.01).

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of co-pending Application No. 09/750,432 and claims 1-76 of co-pending Application No. 09/612,534. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instance claims merely add a conventional dynamically establishing connection.
4. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 8-14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 8-14 do not limit to tangible embodiments. In view of applicant's disclosure, there is no explicit and deliberate definitions which include examples intended to be cover by the claim terminology, i.e., computer readable medium, the medium therefore, does not limited to tangible embodiments, instead being defined to includes tangible embodiment, applicant's omitted the definition. As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

7. Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi et al (US 2002/0023158, "Polizzi," hereafter) and Kirby et al (US 5,925,117, "Kirby," hereafter).

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8. Regarding claims 1, 8 and 15, Polizzi discloses a method, apparatus and program product (hereinafter a “system”) comprising:

providing at least one interface module to interface with a remote application (105, fig.1);  
providing port module to interface between interface module and data source (agent, 130, fig. 1);

providing a connection manager to facilitate between the interface module and port module (service broker 125 fig. 1; ¶ 21).

Polizzi does not explicitly disclose a capability of reconnecting when data source, e.g., resource became available, with inherent unavailability detection of the data source.

However, a technique or concept of resource availability detection is not new, it has been around long prior to applicant’s invention was made. It has been utilized to improve efficiency of network data communications. For instance, in the same field of endeavor, Kirby teaches the same (Col.3, lines 33-58).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to adapt the known technique as suggested by Kirby with Polizzi to connect or reconnect source and target or data source and application, dynamically. The combination would eliminate a tedious task of having a user to manually checking and reconnecting communication, in which would increase user’s convenient and improving Polizzi system’s efficiency.

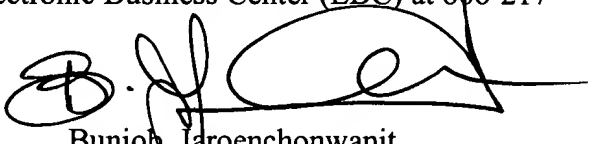
9. Regarding claims 2-5, 9-12 and 16-17, Polizzi-Kirby discloses, detecting unavailability is accomplish by software module executed in a computer. Polizzi-Kirby does not explicitly call its software module as being specified by the claims language. However, applying the detection

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capability to any software module regardless of its nomenclature does not produce unexpected result and is an obvious variation of design choice, which depends on designer desirable. They are not patentable distinct.

10. Regarding claims 6, 7, 13, 14, 18 and 19, Polizzi-Kirby discloses, re-establishing a connection between the port module and the data source independently from initialization of the connection manager, i.e., without re-initializing the connection manager (reconnection is done with out rebooting device, see Kirby, Col 3, lines 32-40).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bunjob Jaroenchonwanit whose telephone number is (571) 272-3913. The examiner can normally be reached on 8:00-17:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bunjob Jaroenchonwanit  
Primary Examiner  
Art Unit 2143

/bj  
8/18/05